

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAS VEGAS SUN, INC., a Nevada corporation,
Plaintiff,

vs.

SHELDON ADELSON, an individual and as the
alter ego of News+Media Capital Group LLC and
as the alter ego of Las Vegas Review Journal,
Inc.; PATRICK DUMONT, an individual;
NEWS+MEDIA CAPITAL GROUP LLC, a
Delaware limited liability company; LAS
VEGAS REVIEW-JOURNAL, INC., a Delaware
corporation; and DOES, I-X, inclusive,

Defendants.

2:19-cv-01667-GMN-VCF

**ORDER RE DEFENDANTS'
MOTION FOR RELIEF RE
DEPOSITION CONDUCT (DOC. 691)**

LAS VEGAS REVIEW-JOURNAL, INC., a
Delaware corporation,

Plaintiff,

vs.

LAS VEGAS SUN, INC., a Nevada corporation;
BRIAN GREENSPUN, an individual and as the
alter ego of Las Vegas Sun, Inc.; GREENSPUN
MEDIA GROUP, LLC, a Nevada limited liability
company, as the alter ego of Las Vegas Sun, Inc.,

Defendants.

Before the Court for consideration is Defendants' Motion for Relief Re Deposition Conduct (Doc. 691) filed May 19, 2022. On June 2, 2022, Plaintiff filed its Opposition to Defendants' Motion (Docs. 694 and 695). Subsumed therein was Plaintiff's Countermotion for Discovery Sanctions (Docketed separately

1 as Docs.696 and 697). On June 8, 2022, the Parties filed a Stipulation to Permit Consolidated Briefing
2 (Doc. 700) which was Granted the same date (Doc. 701). On June 16, 2022, Defendants filed a Reply in
3 support of their Motion for Relief RE Deposition Conduct (Doc. 707), and Opposition to Plaintiffs
4 Countermotion for Discovery Sanctions (Doc. 708). Finally, on June 23, 2022, Plaintiff filed a Reply in
5 support of its Countermotion for Discovery Sanctions (Doc. 711). A hearing was conducted on the
6 foregoing Motions on July 6, 2022.

7 The foregoing array of briefs stem from an issue which arose during the deposition of Defendant
8 Review Journal's Publisher, Keith Moyer, conducted on April 5, 2022. Specifically, Defendants argue
9 that during examination of Moyer, Plaintiff's Counsel "repeatedly mischaracterized the contents of"
10 Defendant Review Journal's Notice of Default letter to Plaintiff dated April 29, 2019, by stating "at least
11 four times that the Review-Journal's notice of default letter to Sun for its breaches of the parties Joint
12 Operating Agreement" were "uncurable" and "could not be cured," when in fact the letter actually stated:
13 "Please note, Section 9.1.2 of the JOA gives Sun Corporation sixty days to cure certain of its defaults."
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15 Defendants contend the conduct of Plaintiff's Counsel violated his "duties of candor and
16 truthfulness," violated various provisions of the Nevada Rule of Professional Conduct, improperly
17 badgered witness Moyer, and warrants the following relief:

- 18 1. Striking the portion of Moyer's deposition testimony containing the Sun's misrepresentations;
- 19 2. Admonishing Sun's Counsel for making false representations to a witness about the contents
20 of a document that had not been placed before the witness during examination;
- 21 3. Prohibiting Sun's counsel from misrepresenting the contents of any document, or
22 misrepresenting any material fact, to any witness;
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- 1 4. Amending the Court's March 15, 2022, Order approving the Parties' stipulated protocols for
2 depositions (Doc. 618), to allow counsel to object on the grounds that opposing counsel is
3 misstating the contents of a document that has not been presented to the witness; and
- 4 5. Granting Defendant Review Journal an award of its attorneys' fees and costs associated with
5 bringing the instant motion.

6 Plaintiff does not dispute that its Counsel was wrong during examination of Mr. Moyer when he
7 represented that Defendants Notice of Default letter to Plaintiff stated the "deficiencies or defaults" alleged
8 were "uncurable," or "could not be cured." I find this is not a subject amenable to reasonable debate as
9 the Notice of Default letter clearly states in the second paragraph that the JOA gives Plaintiff "sixty days
10 to cure certain of its deficiencies."

11 Instead, Plaintiff argues that Defendants attack on Plaintiffs' Counsel and its request for sanctions
12 and other relief is unwarranted because Defendants have failed to show Plaintiffs Counsel misrepresented
13 a fact and "did so knowingly." On this point, I agree with Plaintiff.

14 Showing that an attorney misstates the content of a letter or exhibit during examination of a witness
15 does not automatically establish that the factual misstatement was made knowingly. The record adduced
16 does not establish that it was. The excerpts of the Moyer deposition produced in exhibits to briefing on
17 the instant motion show that each time Plaintiffs Counsel mischaracterized the content of the Notice of
18 Default letter, an "Objection as to form" was asserted by Defendants Counsel. While this was consistent
19 with Section 2 of the Joint Stipulation to Set Deposition Protocols (Doc. 616) entered by the Parties on
20 March 14, 2022, and approved by the Court on March 15, 2022, the form objection did not call out the
21 nature of the "form" of the question at issue such as "misstates the content of the letter." Also, Section 6
22 of the Stipulation regarding Deposition Protocols permits counsel examining a witness to request the basis
23 for an objection to determine whether to restate the question. Plaintiffs Counsel did not do so. As a result,
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1 it is not apparent that at the time of the deposition, Counsel for either Party, or Witness Moyer, had a clear
2 recollection of the contents of three page Notice of Default letter.

3 Alternatively, the factual error in the question could have been corrected at that time by simply
4 invoking Section 4 of the Stipulation for Deposition Protocols which specifically permits objections
5 pursuant to Federal Rule of Civil Procedure 32(d)(3)(B)(i), which includes objections regarding “other
6 matters that might have been corrected at that time.”¹ This, of course, assumes Counsel for Defendants
7 was aware of the factual error in the question posed to Mr. Moyer. If Counsel for Defendants was aware,
8 they should have called it out. If unaware, then the record supports the finding that neither Plaintiffs nor
9 Defendants Counsel was acting “knowingly” with respect to the questions at issue.

10 In sum, the Deposition Protocols as stipulated are expressly designed to “ensure that depositions
11 are conducted efficiently and to minimize disputes.” They are perfectly adequate to correct a question
12 predicated on a misstatement of fact if applied in a common sense and reasonable manner and no
13 amendment is required.

14 Neither is striking the portion of Moyer’s deposition testimony responding to Plaintiffs question
15 which misstated a fact warranted. There is a salient difference between an examination of a witness at
16 deposition and the examination of the same witness at trial. The examination reflected in the deposition
17 excerpts of Moyer’s deposition included as Exhibits to the instant Motion to be repeated at trial is unlikely
18 to nonexistent. The trial judge will be in the best position to control the mode of examination and
19 determine which testimony will be allowed at the trial of this case. Although I may have strong views on
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24 ¹ Additionally, as has been stressed at prior hearings by the undersigned, when counsel
25 encounter an issue in the midst of a deposition that requires the attention of the
Court immediately, they are free to attempt to reach me by telephone through the JAMS
Case Manager and if available I will attempt to address it.

1 the subject, I find it appropriate as Special Master to defer to the trial judge to determine the “mode and
2 order of examining witnesses” at trial in accord with FRE 611.

3 At this point, after exhaustive briefing and argument on the matter, anyone within earshot of this
4 case knows the content of the Notice of Default letter dated April 29, 2019. Any counsel who repeats the
5 error before the Court, or who seeks to impeach Mr. Moyer at trial on the basis of testimony given in
6 response to deposition questions which were predicated on a factual assumption now known to be
7 incorrect, would do so at their peril.

8 Similarly, relief in the form of an admonition not to make false representations or misrepresenting
9 the contents of any document to a witness is unnecessary. Counsel for the Parties in this case are all
10 experienced, and capable trial counsel who have consistently adhered to the high standards of professional
11 conduct of the legal profession. The Court certainly does not expect any counsel involved in this case to
12 knowingly misrepresent anything and I find that an admonition is not necessary for counsel to know that
13 any misrepresentation of fact or law will be sanctioned by the Court if found to have occurred. Therefore,
14 I find that Defendants’ Motion for Relief should be denied.

15 I further find that on the record adduced, Plaintiff has failed to establish a basis for Discovery
16 Sanctions as set forth in its Countermotion (Docs. 696 & 697). Therefore, Plaintiff’s Countermotion
17 should also be denied.

18 Finally, the increasingly strident tone exhibited in the foregoing litany of motions suggests that
19 after years of tedious and costly document and deposition discovery, the discovery process is weighing
20 heavily on Counsel. The Parties would be well served by completing discovery and preparing this case
21 for resolution at trial, or other resolution. As is undoubtedly apparent to Counsel by the rather abrupt
22 manner in which I closed the hearing on this Motion, I am of the view that it is time for Counsel to
23 complete the discovery process within the confines of the latest discovery schedule approved by the Court.
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1 Based upon the foregoing findings,

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3 IT IS ORDERED that Defendants' Motion for Relief Re Deposition Conduct (Doc. 691) is Denied.

4 IT IS FURTHER ORDERED that Plaintiffs Countermotion for Discovery Sanctions (Doc. 696 &
5 697) is Denied.

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8 Dated this 11th day of July 2022.



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11 Hon. Philip M. Pro (Ret.)
12 SPECIAL MASTER
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